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L A W Y E R S

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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE CO.; USA  
CAPITAL REALTY ADVISORS, LLC, USA  
CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC, USA CAPITAL FIRST TRUST  
DEED FUND, LLC, AND USA SECURITIES,  
LLC,

Debtors.

DEL BUNCH AND ERNESTINE BUNCH,

Appellants,

v.

USA COMMERCIAL MORTGAGE CO.,  
et al.,

Appellees

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under  
Case No. BK-S-06-10725 LBR

Appeal Ref. No. 07-05

**RESPONSE TO BUNCH OBJECTION  
TO APPELLEE DEBTOR'S  
DESIGNATION OF ADDITIONAL  
ITEMS TO INCLUDE IN RECORD ON  
APPEAL**

Date: N/A  
Time: N/A

The USACM Liquidating Trust ("USACM Trust"), as successor to USA Commercial Mortgage Company ("USACM") with respect to litigation, hereby responds to the objection by Del and Ernestine Bunch (jointly, "Bunch") to Debtor USACM's Designation of additional Items to Include in Record on Appeal (the "Objection").

Bunch objects to inclusion of four types of documents in the Record on Appeal. The USACM Trust will address each in turn:

1 **Print of the Bankruptcy Court's Docket**

2 The District Court may take judicial notice of the Bankruptcy Court's docket. It  
3 simply proves when various documents were filed. Even if not designated, the USACM  
4 Trust expects that the Bankruptcy Court clerk will transmit a copy of the docket to the  
5 District Court with the remainder of the record on appeal. There is no reason to strike it  
6 from the record on appeal.

7 **Post-Decision Filings re Bunch Claim**

8 Bunch objects to inclusion of the Supplemental Brief in support of USACM's  
9 objection to the Bunch claim and the order continuing the hearing on that objection,  
10 because they were filed after the decision declining to temporarily allow the Bunch claim  
11 for voting purposes was entered. Bunch is correct that filings after the appealed decision  
12 generally are not included in the record on appeal. Here, those filings simply show that  
13 the appealed decision is narrow, and does not finally determine allowance or disallowance  
14 of the Bunch claim. In this case, the filings should not be deleted for the same reason that  
15 Bunch has supplementally designated the March 7, 2007 amendment to the Bankruptcy  
16 Schedules [D3109]. It reflects the same point, that the Bunch claim is the subject of an  
17 objection on the merits, which will be resolved separately from the issue of temporary  
18 allowance for voting purposes. The USACM Trust will not argue the merits of the  
19 supplemental brief on appeal, but only that the Bunch claim is the subject of a dispute that  
20 will be separately resolved hereafter. It is appropriate to bring such a point to the District  
21 Court's attention in the same way that it is appropriate to bring post-appeal filings bearing  
22 on the mootness of an appeal to the Court's attention, enabling the Court to take judicial  
23 notice of such filings.

24 **Plan Documents**

25 Bunch included in his designation of record on appeal the Third Amended Joint  
26 Plan of Reorganization ("Plan"), and two Plan Documents Supplements. USACM

1 designated other documents filed in conjunction with the Plan: the Revised Schedule of  
2 Executory Contracts and Unexpired Leases, the Asset Purchase Agreement, and the Notice  
3 and Amended Notice of Filing of Form of Disbursing Agent Agreements. The Court was  
4 well aware of all the Plan documents being filed, and USACM and the USACM Trust  
5 assume that they were considered as a whole when the Court ruled on the Bunch motion  
6 for temporary allowance of the Bunch claim for voting purposes.

7 The USACM Trust does not know whether the Bunch brief will include  
8 descriptions of the Plan that warrant consideration on appeal of aspects of the Plan that  
9 relate to the additional Plan documents. To the extent the Plan and some of the Plan  
10 Supplement documents are considered, the rest of the Plan documents should be available  
11 for consideration as well.

#### 12 **Statement of Financial Affairs and Early Plan and Notice Documents**

13 Bunch included in his designation of record the USACM Schedule of Assets and  
14 Liabilities. USACM accordingly designated the Statement of Financial Affairs and  
15 Amended Statement, to provide a complete record of the status of the Debtor and its  
16 creditors on the petition filing date. The USACM Trust does not object to deletion of the  
17 Statements of Affairs at this point, but reserves the right to re-designate them later if  
18 Bunch's arguments call for them.

19 Bunch also objected to including orders extending the Debtor's exclusive period to  
20 file and confirm a plan, a notice of hearing on the Disclosure Statement and notice of the  
21 confirmation hearing and related deadlines and a certificate of service. These documents  
22 provide additional procedural background for the Plan. The USACM Trust does not  
23 object to deleting these from the record on appeal at this point either, but reserves the right  
24 to re-designate them if issues of Plan timing or notice are raised.  
25  
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Dated: March 20, 2007.

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By: /s/ RC (#6593)

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